

157 FERC ¶ 61,218
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

December 16, 2016

In Reply Refer To:
Lee County, Florida
Docket No. EL17-12-000

Stinson Leonard Street, LLP
1775 Pennsylvania Avenue, NW
Suite 800
Washington, DC 20006

Attention: Harvey L. Reiter, Esq.
Attorney for Lee County, Florida

Dear Mr. Reiter:

1. On October 27, 2016, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure,¹ Lee County, Florida (Lee County) filed a petition for declaratory order (Petition) requesting that the Commission declare that section 201(f) of the Federal Power Act (FPA)² exempts Lee County from rate regulation under sections 205 and 206 of the FPA.³ Also, Lee County requests an exemption from the filing fee otherwise applicable to petitions for declaratory order. In this order, we grant in part Lee County's petition, as discussed below.

2. According to the Petition, Lee County owns a municipal solid waste resource recovery facility that includes two steam turbine-generating units of 39 MW and 20 MW,⁴ which are qualifying facilities under the Public Utility Regulatory Policies Act

¹ 18 C.F.R. § 385.207(a)(2) (2016).

² 16 U.S.C. § 824f (2012).

³ 16 U.S.C. §§ 824d, 824e (2012).

⁴ Lee County Petition at 2 (Petition). The units are interconnected to Florida Power & Light Company's electric grid.

of 1978.⁵ Lee County states that power from the units is currently sold pursuant to a contract that will expire on December 31, 2016. Lee County states that, after the contract expires, it intends to sell the units' output into the wholesale power market in Florida. Lee County requests that the Commission act on the Petition before the end of the year.

3. Lee County asserts that, as a political subdivision of the State of Florida, it is exempt from rate regulation under the FPA, pursuant to section 201(f) of the FPA.⁶ Lee County asserts that Commission and court precedent support its request.⁷

4. As for the filing fee normally associated with petitions for declaratory orders, Lee County asserts that, pursuant to 18 C.F.R. § 381.108 (2016) and Commission precedent,⁸ a state and its political subdivisions are exempt from the filing fee for a declaratory order. Therefore, Lee County requests confirmation that it is exempt from the filing fee.

5. Notice of Lee County's filing was published in the *Federal Register*, 81 Fed. Reg. 76,571 (2016), with interventions and protests due by November 25, 2016. No interventions or protests were filed.

6. Based on the facts presented in the Petition, and subject to revision based on changed circumstances in the future, we find that Lee County qualifies for the exemption set forth in section 201(f) of the FPA. This section provides that no provision in Part II of the FPA shall apply to, or be deemed to include, among other things, "a State or any political subdivision of a State . . . or any agency, authority, or instrumentality" of the state or the political subdivision.⁹ Lee County represents that it is a political subdivision

⁵ 16 U.S.C. § 824a-3 (2012).

⁶ 16 U.S.C. § 824(f) (2012).

⁷ Lee County Petition at 3 (citing *National Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277, 1281 (D.C. Cir. 2007); *Bonneville Power Admin. v. FERC*, 422 F.3d 908, 915-16 (9th Cir. 2005); *InterAmerican Energy Sources, LLC*, 150 FERC ¶ 61,095 (2015); *New West Energy Corp.*, 83 FERC ¶ 61,004 (1998); *Pacific Water and Power, Inc. v. State of Cal.*, 51 FERC ¶ 61,080 (1990)).

⁸ *Id.* at 4 (citing *InterAmerican Energy Sources, LLC*, 150 FERC ¶ 61,095).

⁹ 16 U.S.C. § 824(f) (2012).

of the State of Florida,¹⁰ and Commission precedent supports this fact.¹¹ Accordingly, we grant Lee County's Petition for exemption from Commission rate regulation, but only in part, as described below.

7. Section 201(f) does not provide a blanket exemption from all Commission rate regulation. Section 201(b)(2) provides that, notwithstanding section 201(f), the provisions of certain sections, including sections 206(e) and 220, "shall apply to the entities described in such provisions, and such entities shall be subject to the jurisdiction of the Commission for purposes of carrying out such provisions"¹² Accordingly, we grant Lee County's petition in part and confirm that it is exempt from sections 205 and 206 of the FPA, but only to the extent permitted under the FPA.

8. Finally, section 381.108(a) of the Commission's rules and regulations provides that "[s]tates [and] municipalities . . . are exempt from the fees required by this part and may file a petition for exemption in lieu of the application fee."¹³ Under the FPA, a municipality is defined as "a city, county . . . or other political subdivision or agency of a State . . . ,"¹⁴ which includes Lee County. Thus, we grant Lee County's request for an exemption from the filing fee.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

¹⁰ Petition at 3.

¹¹ See *Florida Power & Light Co.*, 118 FERC ¶ 61,176, at P 13 (2007) (finding that Lee County's sovereign immunity status as a political subdivision of the State of Florida merited a non-conforming indemnification provision in the Large Generator Interconnection Agreement between Lee County and the Florida Power & Light Company).

¹² 16 U.S.C. § 824b(2) (2012).

¹³ 18 C.F.R. § 381.108(a) (2016).

¹⁴ 16 U.S.C. § 796(7) (2012).